

Chapter 24

Public Nuisances

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24.01 PUBLIC NUISANCES PROHIBITED

No person shall cause, create, continue or permit any public or private nuisance, engage in any pursuit or occupation resulting in a public or private nuisance or keep, use or allow others to use premises for pursuit of a public nuisance. A nuisance is any act or omission which results in actual or potential detriment to health, peace, or safety, or to the morals and decency of the Village, to the environment or to public and private property or its value.

- A. Breaking or Injuring Trees: No person shall break or injure any trees, shrubs or plants in any parkway in the Village of Amherst, nor shall they allow their pets or animals to do the same.
- B. Prohibited Types of Trees: No person shall hereafter sell or plant, within the Village of Amherst, the following trees:
 - (1) Black Locust
 - (2) Box Elder
 - (3) Catalpa
 - (4) Cotton-bearing Poplar
 - (5) Cotton-bearing Cottonwood
 - (6) Scotch Pines

All trees of these types currently found within the Village limits are subject to inspection by the Village Forester.

- C. Street Trees: It is prohibited to plant trees that reach a maximum, mature height of greater than eighteen (18) feet underneath any overhead electric wires.

The Director of Public Works shall maintain a list of appropriate trees that are permitted to be planted underneath overhead electric wires.

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24.02 JURISDICTION OVER NUISANCES

Any person, county, city, village or town may maintain an action to recover damages or to abate a public nuisance from which injuries peculiar to the complainant are suffered, so far as necessary to protect the complainant's rights and to obtain an injunction to prevent the same. (Wisconsin State Statutes 823.01)

Without limitation as to any step, measure, or action which may be taken under law or ordinance, the Village of Amherst may maintain an action to recover damages or to abate a public nuisance. The Village may also maintain such an action to recover damages and abate a nuisance from which injuries peculiar to a complainant are suffered, so far as necessary to protect the complainant's rights and to obtain an injunction to prevent the same.

Effective: 12-17-83

24.03 PUBLIC NUISANCES - HEALTH

- A. Definition: A nuisance under this chapter, is any source of filth, cause of sickness, or potential cause of sickness. The Village Board may order the abatement or removal of a nuisance on private premises, and if the owner or occupant fails to comply, the Village Board, or its agent, may enter upon the premises and abate or remove such nuisance.
- B. Specific Nuisances: The following acts or conditions are hereby specifically declared to be public nuisances but such enumeration shall not be construed to exclude other health nuisances.
- (1) All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.
 - (2) Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death.
 - (3) Accumulations of any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats, skunks or other vermin may breed.
 - (4) All stagnant water in which mosquitoes, flies or other insects can multiply.
 - (5) All noxious weeds.
 - (6) All animals running at large.
 - (7) The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the Village limits or within one (1) mile there from in such quantities as to endanger the health of persons of ordinary sensibilities to threaten or cause substantial injury to property in the Village.
 - (8) The pollution of any public well, stream or other body of water by sewage, industrial wastes or other substances.
 - (9) Use of any property within the Village limits emitting or causing any noxious or disagreeable odors or gases, extremely repulsive to the physical senses which annoy, injure or inconvenience the health of any appreciable number of persons within the Village.
 - (10) The direction, management, operations, and use of any industry, thing or place where any nauseous, offensive, or unwholesome business is carried on.

- (11) No person shall throw, place or leave any dead animal, feces, or any liquid of offensive smell or otherwise noxious or unwholesome, upon any street, gutter, sidewalk or public place in the Village, nor at any place where it will become offensive to any person.
- (12) Smoking shall be prohibited in all enclosed Municipal owned buildings within the Village of Amherst including but not limited to any hallway, waiting area, rest room, cafeteria, meeting room, lobby, reception area or private enclosed office of any employee or elected official. There shall be no smoking in any vehicle owned or leased by the Village. For the purpose of this ordinance, "municipal building" means any building or portion thereof owned or leased by the municipality, including any enclosed walkway connecting such structures and "smoking" shall mean inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed or plant.

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24.04 PUBLIC NUISANCES - MORALS AND DECENCY

The following acts or conditions are hereby specifically declared to be public nuisances but such enumeration shall not be construed to exclude other moral/decency nuisances.

A. Alcohol Abuses

- (1) A person who is so intoxicated that he/she is unable to care for his/her own safety and is found in a public place in such condition is guilty of drunkenness and being in such condition is unlawful.
- (2) No person shall drink from or carry for the purpose of immediate consumption, any open container of alcoholic or fermented malt beverage upon the streets or sidewalks of the Village.
- (3) All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by the ordinance of the Village of Amherst shall be deemed a public nuisance.

B. Gambling: All forms of gambling, lotteries and fraudulent devices and practices are prohibited within the limits of the Village of Amherst except if specifically operated by the State of Wisconsin.

- (1) Specific Nuisances: The following acts or conditions are hereby specifically declared to be public nuisances but such enumeration shall not be construed to exclude other gambling devices.
 - (a) All gambling devices and slot machines
 - (b) All gambling houses, building or structures kept or restored to for the purpose of gambling
 - (c) Conducts a lottery or with intent to conduct a lottery, possesses facilities to do so.
 - (d) Enters or remains in a gambling place with intent to make a bet or to play a gambling machine

C. Morals

- (1) No person shall use indecent, vile, profane or obscene language or conduct himself in any indecent, lewd, lascivious or obscene manner within the Village of Amherst.
- (2) All disorderly houses, bawdy houses, houses of ill fame, erected, established, continued, maintained, used, occupied or leased and used for the purpose of lewdness, assignation or prostitution, or permit the same to be used.
- (3) Lewd and lascivious behavior shall not be committed as follows:
 - (a) Commits an act of sexual gratification with another with knowledge that they are in the presence of others.
 - (b) Publicly exposes a sex organ.

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24.05 PUBLIC NUISANCES - PEACE AND SAFETY

A. Specific Nuisances: The following acts or conditions are hereby specifically declared to be public nuisances but such enumeration shall not be construed to exclude other peace/safety nuisances.

- (1) All trees, hedges, billboards, or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.
- (2) All limbs of trees which project over and less than ten (10) feet above the surface of a public sidewalk or street or less than ten (10) feet above any other public place.
- (3) All wires over streets, alleys or public grounds which are strung less than fifteen (15) feet above the surface thereof.
- (4) All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the Village or which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished.
- (5) No person shall throw any glass, rubbish, paper, waste or filth upon the streets, alleys, highways, public parks or other property or upon any body of water within the Village.
- (6) The pollution of any public well, stream or other body of water by sewage, industrial wastes, or other substances.
- (7) Any unauthorized or unlawful use of a public street, alley or sidewalk, or property abutting on a public street, alley or sidewalk, which causes large crowds of people to gather, obstructing traffic and free use of the streets and/or sidewalks.
- (8) All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.
- (9) All abandoned refrigerators or iceboxes from which the doors or other covers have NOT been removed.

- (10) No person shall go upon private property for the purpose of distributing handbills, circulars and the like, except by walking on established approaches thereto, unless such papers are securely and inconspicuously placed on the premises so as to not be blown away or scattered.
- (11) Willfully injure or intentionally deface, destroy or unlawfully remove, take or meddle with any property or any kind of nature belonging to the Village of Amherst or its departments or to any private person without the consent of the owner or property authority.
- (12) All loud, discordant and unnecessary noises or vibrations of any kind.
- (13) Compression Brakes are prohibited. No person shall use motor vehicle brakes which are in any way activated or operated by the compression of the engine of the motor vehicle except when such brakes are applied in an emergency and were necessary for the protection of persons or property. Emergency vehicles shall be exempt from this prohibition.
- (14) The keeping or harboring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing or making of other noises unreasonable annoys another.
- (15) Intentionally cause, provoke or engage in any fight, brawl, riot or noisy altercation other than a bona fide athletic contest.
- (16) Cause bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed.
- (17) Tortures a child or subjects a child to cruel maltreatment, including but not limited to, severe bruising, lacerations, fractured bones, burns, internal injuries or injury constituting great bodily harm. ("Child" means a person under sixteen (16) year of age.)
- (18) No person may derive support, all or in part, from begging, prostitution, pandering, fortune telling or as a similar impostor.

Effective: 12-17-83

24.06 PUBLIC NUISANCES - ENVIRONMENTAL

The following acts or conditions are hereby specifically declared to be public nuisances by such enumeration shall not be construed to exclude other environmental nuisances.

A. Grass and Burning Restrictions

- (1) Grass Fire Regulations: No person shall kindle any grass fire within the Village of Amherst without first securing a written permit from the Village Clerk.
- (2) Burning Restrictions: No person shall kindle or cause to be kindled any fire within the Village, within twenty-five (25) feet of any building, unless the same be confined to a container, designed and operated to prevent the escape of burning material.

- (3) No person shall kindle or cause to be kindled any fire within the village that produces dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities.
- (4) Exception - Spring and Fall Clean up Time: The burning of yard rakings shall be permitted provided that water is readily available and the fire is not left unattended.
Reasonable care shall be exercised in regard to:
 - (a) Amount of rakings to be burned
 - (b) Weather conditions
 - (c) Time of day
 - d. Safe location of fire

B. Trees

- (1) Duties of Private Owners: It is the duty of any person growing a tree, plant or shrub on any private property abutting on public streets or public places to:
 - (a) Trim them so as not be a hazard to persons using the streets or to interfere with the proper lighting of the streets.
 - (b) Treat or remove any tree, plant or shrub which the Forester determines is dead, diseased or insect ridden or a hazard to trees or persons using the streets.
 - (c) Remove and refrain from planting any tree, plant or shrub designated in its regulations to be a host or carrier of a dangerous plant disease or insect pest.
- (2) Preservation or Removal of Trees on Private Property: The Forester shall have the authority and it shall be his duty to order the trimming, preservation or removal of trees, plants and shrubs located on private property when he determines such action is necessary for public safety or to prevent the spread of disease or insects.

C. Junked, Abandoned and Inoperable Vehicles

- (1) Vehicle Defined: As used in the subsection the term "vehicle" shall include motor vehicles, snowmobiles, other self-propelled vehicles, trailers, semi-trailers, and mobile homes.
- (2) Vehicle Abandonment Prohibited: No person shall leave unattended any vehicle on any public highway or public or private property for such time and under such circumstances as to cause the vehicle as to reasonably appear to be abandoned. Any vehicle left unlicensed and either disassembled, inoperable, wrecked, or junked, and any vehicle left unattended for a period in excess of seventy-two (72) hours, shall be deemed abandoned and shall constitute a public nuisance. Provided, however, a vehicle shall not be considered abandoned when:
 - (a) Left out of ordinary public view;
 - (b) Located at duly licensed salvage yards or junk yards;
 - (c) Designated as not abandoned by a duly authorized representative of the Village
- (3) Immediate Disposition: Any vehicle deemed abandoned whose value is less than the cost of towing and costs of storage for a period of fourteen (14)

days, may be junked or sold by the Village forthwith. Provided, however, the Village shall first determine from the Sheriff's Department that such vehicle is not stolen or otherwise wanted for evidence or other reason by any law enforcement authority.

(4) Impoundment

- (a) Any vehicle whose value exceeds the cost of towing and costs of storage for a period of fourteen (14) days, may be junked or sold by the Village forthwith, shall be removed by private towing or public means to a suitable place of public or private impoundment. Upon such removal and impoundment, the designated Village representative shall notify the Sheriff's Department of the abandonment of and the location of the impounded vehicle.
- (b) Immediately upon impounding such vehicle, the Village Clerk shall notify the Division of Motor Vehicles (where applicable for the type of vehicle involved) of the impoundment of the vehicle and its make, motor number, serial number, and registration number, and shall obtain from the Division of Motor Vehicles the name and address of the last registered owner and the names and addresses of any lien holders.
- (c) The Clerk shall thereafter notify the registered owner and all lien holders by certified mail notice of such impoundment to permit reclamation of the vehicle after payment of accrued charges. Such notice shall be deemed given upon mailing and shall include the following information:
 - 1. The year, make, model and any serial or identification numbers of the vehicle;
 - 2. The place where the vehicle is being held;
 - 3. Informing the owner and any lienholders of their rights to reclaim the vehicle within ten (10) days of such notice;
 - 4. A statement that the failure of the owner or lienholders to exercise their rights to reclaim the vehicle shall be deemed a waiver of all right, title, and interest in the vehicle and a consent to the sale of the vehicle within ten (10) days of such notice.

(5) Disposition of Impounded Vehicle

- (a) Every such abandoned vehicle not reclaimed by its owner or lienholder may be sold at any time after the expiration of ten (10) days after notice is given. The sale may be by field bid or auction sale at the option of the designated Village representative. At such sale the highest bid for any such vehicle shall be accepted unless the same is deemed inadequate by such representative, in which event all bids may be rejected. If all bids are rejected or no bid is received, the Village may either readvertise the sale, adjourn the sale to a definite date, sell the vehicle at a private sale, or junk the vehicle. Any interested person may offer bids on each abandoned vehicle to be sold. The Village shall post notice of such sale in

- accord with Class A notice requirements. Such notice shall be in the same form, and shall include all information contained in, the notice sent to the owner and lienholders of record.
- (b) Upon sale of an abandoned vehicle, the Village shall supply the purchaser a complete form designated by the Department of Transportation Division of Motor Vehicles to enable the purchaser to obtain a regular certificate of title to the vehicle. The purchaser shall have ten (10) days to remove the vehicle from the impoundment or storage area, but shall pay reasonable storage fees for all storage after the second (2nd) business day subsequent to the sale date. Ten (10) days after the sale the purchaser shall forfeit all interest in the vehicle and the vehicle shall be deemed to be abandoned and may be sold again.
 - (c) Any listing of vehicles to be sold by the Village shall be made available to any interested person or organization which makes a written request for such request. The Village may charge a fee for such list.
 - (d) Within five (5) days after the sale or disposal of a vehicle, either under paragraphs (2) or (5) above, the Village shall advise the Department of Transportation of the sale or disposition on a form supplied by the Department.
- (6) Costs of Impoundment: The owner of an abandoned vehicle shall be immediately liable and responsible to the Village for all costs of impoundment, including towing and storage, whether or not such owner claims the vehicle after impoundment, except that the amount of such liability shall be reduced by the net proceeds of the sale of such vehicle.
- (7) Vehicles on Private Property: Whenever the duly appointed representative of the Village shall find a vehicle abandoned upon private property, he shall notify the owner of the property upon which such vehicle is placed or stored of his intention to deem the vehicle abandoned and remove the vehicle forthwith. If such property owner does not cause the vehicle to be removed within seventy-two (72) hours, the vehicle shall be deemed abandoned and shall be impounded and disposed of in accord with paragraphs (3), (4) and (5) above. In the event the property owner is also the owner of the vehicle, the costs of such impoundment, including towing and storage, if not paid by the property owner when applicable, shall be entered as a special assessment against the property owner on the tax roll.
- (8) Penalties
- (a) Any person who shall interfere in any way whatsoever with the due process of enforcement of any of the provisions of this Chapter shall be subject to a Class "E" forfeiture, or incarceration in lieu thereof, as provided in Chapter 2.09 of this Code. Each vehicle involved shall constitute a separate offense.
 - (b) The owner of any vehicle which shall be impounded or stored pursuant to the provisions of this Chapter or who shall abandon a

vehicle within the Village and fail to remove the vehicle when properly notified, shall be subject to a Class "E" forfeiture, or incarceration in lieu thereof, as provided in Chapter 2.09 of this Code. This penalty is in addition to all other expenses and charges made applicable under the provisions of this Chapter.

D. Natural Lawn

- (1) Defined: A natural lawn under this Chapter shall include common species of grass and wild flowers native to North America which are designed and purposely cultivated to exceed eight (8") inches in height from the ground. Specifically excluded in natural lawns are noxious grasses and weeds as identified in the Code of Ordinances.
- (2) Permit. A landowner or occupant shall obtain a permit for a natural lawn. The Village Board reserves the right to impose any restrictions or requirements as is determined in the sole discretion of the Village Board to be necessary in light of the characteristics of the neighboring properties.
- (3) Unkept Lawns. Any lawn, grass, or weed on a lot or other parcel of land which exceeds eight (8") inches in length, except for a parcel located in a designated flood plain area and/or wetland, or that which is zoned agricultural, where the lawn, grass or weed is part of a natural lawn, shall be considered a nuisance. For the purpose of lawn maintenance and upkeep, property owners will be responsible for the upkeep of the grassy right of way adjoining their property up to the paved road way. The application of herbicide or other chemical to control the length of any lawn, grass or weed shall not be permitted, except that this prohibition shall not apply if the application of the herbicide or other chemical is part of a program of regular lawn care to eradicate noxious grasses and weeds as identified by the Code of Ordinances. For the purpose of lawn maintenance and upkeep property owners will be responsible for the upkeep of the grassy right of way adjoining their property up to the paved road way.
- (4) This Ordinance shall be effective upon proper posting and publication as required by law.

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Revised: 9/11/01

Revised: 7/13/04

24.07 ABATEMENT OF PUBLIC NUISANCES

- A. Inspection of Premises: Whenever a complaint is made to the Village President that a public nuisance exists within the Village of Amherst, he shall promptly notify the Director of Public Works, the Building Inspector or the Forester who shall inspect or cause to be inspected the premises complained of and shall make a written

report of his findings to the Village President. Whenever practical, the inspecting officer shall take photographs of the premises and file same in the office of the Village Clerk/Treasurer.

- B. Action to Abate: The Village may bring action in any court with jurisdiction to enjoin or abate a public nuisance as set forth in this Chapter and when otherwise permitted or required by the Wisconsin State Statutes.
- C. Summary Abatement
 - (1) Notice to Owner
 - (a) If the inspecting officer shall determine that a public nuisance exists within the Village of Amherst and that there is great and immediate danger to the public health, morals, decency, peace, safety or environment, the Village President shall immediately serve or cause to be served, personally or by registered mail, notice on the person, owner or occupant causing, permitting or maintaining such nuisance and to post a copy of said notice on the premises where such nuisance exists.
 - (b) If the inspecting officer shall determine that a public nuisance exists on private premises but the nature of such nuisance is not such as to threaten great or immediate danger to the public health, morals, decency, peace, safety or environment, he shall file a written report of his findings with the Village President who shall cause an action to abate such nuisance to be commenced in the name of the Village in accordance with the provisions of Chapter 823 of the Wisconsin State Statutes which are hereby adopted by reference and made a part of this code.
- D. Notice: Such notice shall describe the nuisance and recommend procedures for its abatement or removal and shall further state that unless the owner abate or remove the nuisance in the manner and time specified, or appear before the Village Board and show that such nuisance does not exist, the Village shall cause the same to be abated or removed at the expense of the property owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.
- E. Special Assessment: The Village Clerk/Treasurer shall notify the property owner of the cost of any abatement/removal under this chapter. If the same is not paid within thirty (30) days thereafter, it shall be a lien upon such property and collected as a special assessment.

Effective: 12-17-83

24.08 ADMINISTRATION

- A. Penalty: Unless otherwise provided for, any person who violates this Section shall be subject to a Class "B" forfeiture, or incarceration in lieu thereof, as provided in Chapter 2.09 of this Code.
- B. Enforcement: The provisions of this Chapter shall be enforced by all Village Officers. "Village Officers" shall include the Village President, all Village Trustees, all law enforcement personnel of any department with whom the Village has

contracted for law enforcement, and shall specifically include all law enforcement personnel of the Portage County Sheriff's Department.

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